



## NOTICE OF RULE MAKING – Pre-proposal #10-14

The Washington State Liquor Control Board has entered into the initial stage of rule making to new rules in **WAC 314-42 Liquor Control Board Administration**.

The Liquor Control Board, like other state agencies, is required to give “due process” to any action which might be aggrieved by a licensee or applicant. The Administrative Procedures Act (RCW 34.05.482) gives agencies the ability to utilize an abbreviated administrative hearing process (Brief Adjudicative Proceeding BAP) where the issues or interests involved do not warrant use of full adjudicative procedure. This process will not normally utilize an administrative law judge and often is performed by simply submitting a written appeal rather than oral testimony.

This rulemaking will identify those specific instances where the Liquor Control Board may use BAP in lieu of the more formal hearing process.

This notice can be found at <http://www.liq.wa.gov/laws.asp> under Proposed Rules.

The Liquor Control Board encourages you to give input on the creation of rules to authorize a BAP. Following the comment period, the agency will send out and publish proposed rules, establish a comment period on the proposed rules, and hold at least one public hearing before rules are adopted.

### Public Comment

Please forward your initial comments to the Liquor Control Board by mail, e-mail, or fax by **June 18, 2010**.

**By mail:** Rules Coordinator  
Liquor Control Board  
P.O. Box 43080  
Olympia, WA 98504-3080

**By e-mail:**  
[rules@liq.wa.gov](mailto:rules@liq.wa.gov)

**By fax:**  
360-360-664-9689

## **Chapter 314-42 WAC**

### **LIQUOR CONTROL BOARD OPERATIONSLast Update: 8/15/08WAC**

314-42-010	Liquor control board administrative director.
314-42-020	Appearance and practice before the board--Who may appear.
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#### **DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 314-42-025 Appearance in certain proceedings may be limited to attorneys. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-025, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-050 Subpoenas--Fees. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-050, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-060 Depositions upon interrogatories--Submission of interrogatories. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-060, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-065 Official notice--Material facts. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-065, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-075 Stipulations and admissions of record. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-075, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-080 Form and content of decisions in contested cases and proposed orders. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-080, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-090 Definition of issues before hearing. [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-090, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.
- 314-42-100 How can a person petition the board for the adoption, amendment, or repeal of a rule? [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-100, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.

314-42-105            How can a person petition the board for a declaratory order? [Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-105, filed 5/11/01, effective 6/11/01.] Repealed by 08-17-056, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030.

**WAC 314-42-010    Liquor control board administrative director.**    (1) The purpose of this rule is to ensure efficient and consistent administration of the liquor control board through the delegation of certain administrative functions to an administrative director. The delegation of administrative functions by the board, as provided for in this section, does not alter the board's statutory responsibility to administer Title 66 RCW.

(2) The administrative director will be appointed by, and serve at the pleasure of, the board, and will perform his/her duties under the general control, management, and supervision of the board.

(3) The following duties are delegated by the board to the administrative director:

(a) Appointing authority as defined by WAC 356-05-040, 356-30-007, and 356-34-011 for all liquor control board employees, with the exception of the director and staff of the policy, legislative, and media relations division as described in subsection (4)(g) and staff that report directly to the board members;

(b) Authorize expenditures of funds from the board approved internal budget;

(c) Purchase, lease, contract, or otherwise acquire any goods, services, and products within the board approved internal budget;

(d) Approve liquor purchase orders authorized by the board (this authority may be further delegated);

(e) Approve uncontested licenses and permits (this authority may be further delegated);

(f) Assign duties, coordinate agency operations, and establish performance standards and timelines;

(g) Approve disbursements of excess funds from the liquor revolving fund; and

(h) Perform other duties of a routine administrative nature identified by the board.

(4) The following duties will not be delegated and will remain functions of the board:

(a) Final approval of agency-wide and division budgets as prepared by the administrative director;

(b) Revocation or suspension of a license or permit;

(c) Appeals of price posting actions;

(d) Appeals of administrative actions taken against liquor and tobacco licensees;

(e) Approval of product listings and delistings for state liquor stores and agencies;

(f) Approval of contested liquor license and permit applications; and

(g) Direct oversight of the policy, legislative, and media relations division and staff that report directly to the board members, including:

- (i) Rule making actions,
- (ii) Approval of agency-request legislative proposals, and
- (iii) The employment, termination, and discipline of the director and staff of the policy, legislative, and media relations division and staff that report directly to the board members.

[Statutory Authority: RCW 66.08.030, 66.08.070(1), 66.08.130, 66.08.140, 66.08.170, 66.20.010, 66.24.010(2). 01-15-049, § 314-42-010, filed 7/13/01, effective 8/13/01; 00-06-016, § 314-42-010, filed 2/22/00, effective 3/24/00.]

**WAC 314-42-020 Appearance and practice before the board--Who may appear.** During an adjudicative proceeding, no person may appear in a representative capacity before the Washington state liquor control board or its designated hearing officer other than the following:

- (1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;
- (2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are

permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law; and/or

(3) A bona fide officer, authorized manager, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-020, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-030 May a former employee of board or former member of attorney general's staff appear before the board and under what circumstances?** No former employee of the board or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a formal proceeding wherein he/she previously took an active part as a representative of the board unless the board grants permission in writing.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-030, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-030, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-040 What rules apply to the procedures used in practice before the board?** The board adopts the model rules of procedure, found in chapter 10-08 WAC, promulgated by the office of administrative hearings unless the board implements a different procedure by rule.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-040, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-040, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-045 How do you file papers with the board?** Papers required to be filed with the board are deemed filed upon actual receipt by the board during office hours at its headquarters office in Olympia.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-045, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-045, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-051 What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing?** (1) If the licensee or permit holder



requests an administrative hearing, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act and chapter 314-42 WAC).

(2) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(3) If the hearing concerns an administrative violation notice, the assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(4) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(5) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-051, filed 8/15/08, effective 9/15/08.]

**WAC 314-42-070 Presumptions.** Upon proof by direct, clear, and convincing evidence of the predicate facts in the following subdivisions, the board, with or without prior request and with adequate notice to all parties, may make the

following presumptions. The facts may not be in substantial dispute and must be consistent with all surrounding facts and circumstances.

(1) **Identity.** Persons and objects of the same name and description are identical.

(2) **Delivery.** Mail, communications, express or freight, properly addressed, marked, billed and delivered to the post office, or authorized common carrier of property with all postage properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business.

(3) **Spoliation.** When a party in bad faith destroys, suppresses, or withholds evidence material to the case, the administrative law judge can presume the evidence would have been unfavorable to that party's position.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-070, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-070, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-085 Written arguments.** (1) At the conclusion of the evidentiary portion of a hearing, the administrative law judge may call for an oral legal argument on the record, or the administrative law judge may call for written arguments to be submitted to his/her office by the licensee or his/her attorney and the assistant attorney general. Such written

arguments must be submitted in triplicate to the administrative law judge and may not be exchanged by opposing counsel.

(2) When both arguments have been received, the administrative law judge shall deliver one of the copies of the licensee's argument to the assistant attorney general, and one copy of the board's argument shall be forwarded to the licensee or his/her attorney.

(3) Unless a different time is fixed at the hearing, written arguments must be filed within ten days after the conclusion of the taking of the testimony at the hearing.

(4) After the receipt of both written arguments, the administrative law judge shall issue an initial order which will be served on the licensee or his/her attorney and the assistant attorney general.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-085, filed 8/15/08, effective 9/15/08. Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. 01-11-058, § 314-42-085, filed 5/11/01, effective 6/11/01.]

**WAC 314-42-095 What happens after an administrative hearing?** (1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant

attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken; and

(ii) Refer to the evidence of record which is relied upon to support the petition.

(b) Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.

(4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative

Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

[Statutory Authority: RCW 66.08.030. 08-17-056, § 314-42-095, filed 8/15/08, effective 9/15/08.]